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Brazil, Chile, Colombia, Ecuador, El Salvador, Gambia, Guatemala, Mali, Mexico, Peru, Philippines and Sri Lanka: draft resolution

Protection of migrants

The General Assembly,

Reaffirming the Universal Declaration of Human Rights,[1] which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Recalling its resolution 59/194 of 20 December 2004, taking note of Commission on Human Rights resolution 2005/47 of 19 April 2005,[2] and recalling its resolution 40/144 of 13 December 1985, by which it adopted the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live,

Considering that every State party to the International Covenant on Civil and Political Rights[3] must ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and that every State party to the International Covenant on Economic, Social and Cultural Rights[3] has undertaken to guarantee the exercise of all rights enunciated in that Covenant without discrimination of any kind, including, in particular, on the basis of national origin,

Reaffirming the provisions concerning migrants adopted by the World Conference on Human Rights,[4] the International Conference on Population and Development,[5] the World Summit for Social Development,[6] the Fourth World

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[1] Resolution 217 A (III).

[2] See *Official Records of the Economic and Social Council, 2005, Supplement No. 3* (E/2005/23), chap II, sect. A.

[3] See resolution 2200 A (XXI), annex.

[4] See A/CONF.157/24 (Part I), chap. III.

[5] See *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex.

[6] See *Report of the World Summit for Social Development, Copenhagen, 6-12 March 1995* (United Nations publication, Sales No. E.96.IV.8), chap. I, resolution 1, annexes I and II.

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Conference on Women[7] and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and expressing its satisfaction at the important recommendations made for the development of international and national strategies for the protection of migrants and for the design of migration policies that fully respect the human rights of migrants,

Recalling the renewed commitment made in the United Nations Millennium Declaration[8] and at the 2005 World Summit[9] to take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in all societies and to promote greater harmony and tolerance,

Recalling also advisory opinions OC 16/99 of 1 October 1999 and OC 18/03 of 17 September 2003, issued by the Inter-American Court of Human Rights, on the Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law and on the Juridical Condition and Rights of the Undocumented Migrants, respectively,

Taking note of the Judgment of the International Court of Justice of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals*,[10] and recalling the obligations of States reaffirmed therein,

Encouraged by the increasing interest of the international community in the effective and full protection of the human rights of all migrants, and underlining the need to make further efforts to ensure respect for the human rights and fundamental freedoms of all migrants,

Aware of the increasing number of migrants worldwide, and bearing in mind the situation of vulnerability in which migrants and their families frequently find themselves, owing, inter alia, to their absence from their States of origin and to the difficulties they encounter because of discrimination, differences of language, custom and culture, as well as the economic and social difficulties and obstacles to the return to their States of origin, of migrants, especially those who are non-documented or in an irregular migratory situation,

Emphasizing the global character of the migratory phenomenon, the importance of international, regional and bilateral cooperation and the need to protect human rights of migrants, particularly at a time in which migration flows have increased in the globalized economy and take place in a context of new security concerns,

Bearing in mind that policies and initiatives on the issue of migration, including those that refer to the orderly management of migration, should promote holistic approaches that take into account the causes and consequences of the phenomenon, as well as the full respect of human rights and fundamental freedoms of migrants,

Concerned at the large and growing number of migrants, especially women and children, who attempt to cross international borders without the required travel

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[7] See *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

[8] See resolution 55/2.

[9] See resolution 60/1.

[10] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 4* (A/59/4), chap. V, sect. A.23.

documents, which places these migrants in a particularly vulnerable situation, and recognizing the obligation of States to respect the human rights of these migrants,

Deeply concerned at the manifestations of violence, racism, racial discrimination, xenophobia and other forms of intolerance and inhuman and degrading treatment against migrants, especially women and children, in different parts of the world,

Concerned that the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has indicated the appearance of new forms of discrimination targeting migrants, among other groups,

Noting with interest the joint statement by United Nations Special Rapporteurs, Special Representatives, Independent Experts and Chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme at their eleventh annual meeting,[11] in which they expressed their strong concern regarding the continued deterioration in the situation and the denial of the human rights of migrants, in particular current attempts to institutionalize discrimination against and exclusion of migrants,

Highlighting the importance of creating conditions that favour greater harmony, tolerance and respect between migrants and the rest of society in the countries in which they find themselves in order to eliminate manifestations of racism and xenophobia against migrants and members of their families,

Recognizing the positive and diverse contributions that migrants make to host and origin societies and the efforts that some host countries undertake to integrate migrants and their families,

Recognizing also the increasing participation of women in international migration movements,

Welcoming the work of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families,

Noting with appreciation the work done by the International Labour Organization in the field of the rights of migrant workers,

Resolved to ensure respect for the human rights and fundamental freedoms of all migrants,

1. *Strongly condemns* the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them, and urges States effectively to apply the existing laws when xenophobic or intolerant acts, manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit xenophobic and racist acts, and calls upon States to implement fully the commitments and recommendations relating to the promotion and protection of human rights of migrants contained in the Durban Declaration and Programme of Action[12] through, inter alia, the adoption of national plans of action, as recommended by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance;

[11] E/CN.4/2005/5, annex I, sect. C.

[12] See A/CONF.189/12 and Corr.1, chap. I.

2. *Also strongly condemns* all forms of racial discrimination and xenophobia related to access to employment, vocational training, housing, schooling, health services and social services, as well as services intended for use by the public;

3. *Welcomes* the active role played by governmental and non-governmental organizations in combating racism and xenophobia and in assisting victims of racist acts, including migrant victims;

4. *Calls upon* all States to consider reviewing and, where necessary, revising immigration policies with a view to eliminating all discriminatory practices against migrants and their families and adopting effective action to create conditions that foster greater harmony and tolerance within societies, and to provide specialized training for government policymaking, law enforcement, migration and other concerned officials, including in cooperation with non-governmental organizations and civil society;

5. *Requests* States effectively to promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights[13] and the international instruments to which they are party, which may include the International Covenants on Human Rights,[14] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[15] the Convention on the Elimination of All Forms of Discrimination against Women,[16] the Convention on the Rights of the Child[17] and the International Convention on the Elimination of All Forms of Racial Discrimination,[16] the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[17] and other relevant human rights instruments, norms and standards;

6. *Requests* all States, international organizations and relevant stakeholders to take into account in their policies and initiatives on migration issues the global character of the migratory phenomenon and to give the necessary relevance to international, regional and bilateral cooperation in this field, with a view to addressing, in a comprehensive manner, its causes and consequences and granting priority to the protection of human rights of migrants;

7. *Welcomes* the increasing number of signatures and ratifications or accessions to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and calls upon States that have not done so to consider urgently signing and ratifying or acceding to the Convention;

8. *Encourages* States parties to implement fully the United Nations Convention against Transnational Organized Crime and the two additional protocols thereto, namely, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention

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[13] United Nations, *Treaty Series*, vol. 1465, No. 24841.
[14] Ibid., vol. 1249, No. 20378.
[15] Ibid., vol. 1577, No. 27531.
[16] Resolution 2106 A (XX), annex.
[17] Resolution 45/158, annex.

against Transnational Organized Crime,[18] and urges States that have not done so to consider ratifying them;

9. *Reaffirms emphatically* the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations of 1963,[19] in particular with regard to the right of all foreign nationals, regardless of their immigration status, to communicate with a consular official of the sending State in the case of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform without delay the foreign national of his or her rights under the Convention;

10. *Expresses concern* about the legislation and the measures adopted by some States that restrict the human rights and fundamental freedoms of migrants;

11. *Welcomes* immigration programmes, adopted by some countries, that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious and tolerant environment, and encourages States to consider the possibility of adopting these types of programmes;

12. *Calls upon* States to facilitate family reunification in an expeditious and effective manner, with due regard to applicable laws, as such reunification has a positive effect on the integration of migrants;

13. *Encourages* all States to integrate a gender perspective in developing international migration policies and programmes in order to adopt the necessary measures to better protect women and girls against dangers and abuse during migration and to foster their opportunities to contribute to their societies of origin and destination;

14. *Calls upon* States to protect and promote all human rights of migrant children, given their vulnerability, in particular unaccompanied migrant children, ensuring that the best interests of the children are a primary consideration, underlines the importance of reuniting them with their parents, when possible, and encourages the relevant United Nations bodies, within the framework of their respective mandates, to pay special attention to the conditions of migrant children in all States and, where necessary, to put forward recommendations for strengthening their protection, especially against sexual abuse, sexual exploitation, threat or use of force or other forms of coercion, including coercion into begging and drug dealing, in particular by national or transnational organized crime groups;

15. *Encourages* States of origin to promote and protect the human rights of those families of migrant workers that remain in the countries of origin, paying particular attention to children and adolescents whose parents have emigrated, and encourages international organizations to consider supporting States in this regard;

16. *Requests* all States, in conformity with national legislation and applicable international legal instruments to which they are party, firmly to prosecute violations of labour law with regard to the conditions of work of migrant workers, including those related to, inter alia, their remuneration and the conditions of health, safety at work and the right to freedom of association;

17. *Encourages* all States to remove obstacles that may prevent the safe, unrestricted and expeditious transfer of earnings, assets and pensions of migrants to

[18] *Resolution 55/25, annexes I-III.*
[19] United Nations, *Treaty Series*, vol. 596, No. 8638.

their country of origin or to any other countries, in conformity with applicable legislation, and to consider, as appropriate, measures to solve other problems that may impede such transfers;

18. *Calls upon* States to observe national legislation and applicable international legal instruments to which they are party when enacting national security measures in order to respect the human rights of migrants;

19. *Urges* all States to adopt effective measures to put an end to the arbitrary arrest and detention of migrants and to take actions to prevent and punish any form of illegal deprivation of liberty of migrants by individuals or groups;

20. *Also urges* all States to promote and adopt effective measures to enforce their immigration laws and border controls only by means of duly authorized and trained government officials and to prevent private persons or groups from carrying out conduct reserved for such government officials, as well as to prosecute and punish those violations of the law that may result from such conduct;

21. *Requests* States to adopt concrete measures to prevent the violation of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints, to train public officials who work in those facilities and in border areas to treat migrants and their families respectfully and in accordance with the law, and to prosecute, in conformity with applicable law, any act of violation of the human rights of migrants and their families, inter alia, arbitrary detention, torture and violations of the right to life, including extrajudicial executions during their transit from their country of origin to the country of destination and vice versa, including their transit through national borders;

22. *Encourages* States that have not yet done so to enact domestic legislation and to take further effective measures to combat and prosecute international trafficking in and smuggling of migrants, recognizing that these crimes may endanger the lives of migrants or subject them to harm, servitude or exploitation, which may include debt bondage, slavery and sexual exploitation or forced labour, and also encourages States to strengthen international cooperation to combat such trafficking and smuggling;

23. *Also encourages* States, in cooperation with non-governmental organizations, to undertake information campaigns aimed at clarifying opportunities, limitations and rights in the event of migration, so as to enable everyone, in particular women, to make informed decisions and to prevent them from becoming victims of trafficking and utilizing dangerous means of access that put their lives and physical integrity at risk;

24. *Encourages* States to consider participating in international and regional dialogues on migration that include countries of origin and destination, as well as countries of transit, and invites them to consider negotiating bilateral and regional agreements on migrant workers within the framework of applicable human rights law and designing and implementing programmes with States of other regions to protect the rights of migrants;

25. *Requests* Member States, the United Nations system, international organizations, civil society and all relevant stakeholders, especially the United Nations High Commissioner for Human Rights and her Office, as well as the Special Rapporteur of the Commission on Human Rights on the human rights of migrants, to ensure that the perspective of human rights of migrants is included as a

priority issue in the ongoing analysis on migration and development within the United Nations system, including, in particular, at the high-level dialogue that will be held during the sixty-first session of the General Assembly, pursuant to resolution 58/208 of 23 December 2003;

26. *Calls upon* States, the United Nations system and intergovernmental and non-governmental organizations to observe, on 18 December of each year, International Migrants Day, proclaimed by the General Assembly,[20] through, inter alia, the dissemination of information on the human rights and fundamental freedoms of migrants and on their economic, social and cultural contributions to their host and home countries, the sharing of experience and the adoption of measures to ensure their protection, and to promote greater harmony between migrants and the societies in which they live;

27. *Welcomes* the renewal of the mandate of the Special Rapporteur of the Commission on Human Rights on the human rights of migrants for a period of three years and the appointment of the new Special Rapporteur, as well as the interim report submitted by him to the General Assembly,[21] including the proposed methods of work for the fulfilment of his mandate;

28. *Requests* all Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, to furnish all information requested and to respond appropriately and expeditiously to his urgent appeals and to give serious consideration to his requests to visit their countries, and welcomes in this regard the standing invitations extended by some Member States to all special procedures, including the Special Rapporteur;

29. *Requests* all relevant mechanisms to cooperate with the Special Rapporteur;

30. *Requests* the Secretary-General to give the Special Rapporteur all the human and financial assistance necessary for the fulfilment of his mandate;

31. *Takes note with appreciation* of the report of the Secretary-General,[22] and calls upon Member States and all relevant stakeholders to consider the implementation of the recommendations contained therein;

32. *Decides* to examine the question further at its sixty-first session under the sub-item.

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[20] See resolution 55/93.

[21] See A/60/357.

[22] A/60/272.